IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

CRL.A.No. 442 of 2000(C)

CC.724/1998 OF JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

APPELLANT:

RAMACHANDRAN,
S/O. KARUNAKARAN,
CHEMBIL HOUSE,
KOTTAPADY.

BY ADV. SRI.M.PREMCHAND.

RESPONDENTS:

1. **K.I. JAYAN,**
   S/O. ITTAMAN,
   KANAMKOTT HOUSE,
   KOTTAPADY.

2. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 442 OF 2000

DATED THIS THE 11th September 2007

JUDGMENT

The revision petitioner/complainant who had initiated proceedings under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted. It is the case of the complainant on 23-5-1998 the accused borrowed a sum of Rs.40,000/- from the complainant and when demanded the amount back, he issued the impugned cheque for R.40,000/- on 23-6-1998. The cheque when presented got dishonoured for want of funds in the account of the accused. Lawyer notice was issued which was returned with the endorsement "not claimed".

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 4 and Exts.P1 to P9 and DW1 and Exts.D1 and D2.

3. It is the defence version that only a sum of Rs.8000/- was borrowed by the accused in 1998 from Suvarna Finance, Kottappady and on security he had issued signed blank cheque and stamp paper. Making use of the signed stamp paper, the complainant has filed a civil suit against the wife of the accused for specific performance of

the contract with respect to the property. PW1 was examined. He has denied that he has anything to do with the Suvarna Finance but at the instance of the defence, DW1, the Managing Partner of Suvarna Finance was examined and Ext.D2 partnership deed was produced which would show that the complainant was a partner in the Suvarna Finance. It was further found that as per Ext.P1 copy of the plaint in O.S.No.1136/1998 instituted by the complainant against the wife of the accused, the version is that he had advanced a sum of Rs.76,000/- on 30-10-1998 and the amount fixed for sale was Rs.96,000/-. It was noted that as per the pleadings in the present case the impugned cheque was issued on 23-6-1998. The above was also taken as a circumstance to find that the case set up by the complainant cannot be believed. In the circumstances, I find that there is no scope for interference in the findings of the court below. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A.NO. 442 OF 2000

JUDGMENT

11-9-2007